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1-CV-01-793

York Wallcoverings Inc.

VS.

S.A. Maxwell Company Inc  
et al

**FILED**  
HARRISBURG, PA

APR 26 2002

MARY E. D'ANDREA, CLERK  
Per                       
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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YORK WALLCOVERINGS, INC.,	:	
	:	
Plaintiff,	:	NO. 1: CV-01-0793
	:	
v.	:	(The Hon. Sylvia H. Rambo)
	:	
S.A. MAXWELL COMPANY, INC.	:	
and JAIMA BROWN,	:	
	:	
Defendants.	:	
	:	

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DECLARATION OF WILLIAM CARROLL

William Carroll declares under the penalties of perjury as follows:

1. For many years I have been a designer of textiles and wallcoverings. Since 1990, I have been an independent designer conducted business as Tierkelly Designs Ltd., at 57 Meadow Drive, Orangeville, Ontario, L9W 4C4, Canada.
2. I have designed wallcoverings for a number of manufacturers including both York Wallcoverings, Inc. ("York") and S.A. Maxwell Company, Inc. ("Maxwell").
3. In April and May of 2000, I designed for Maxwell the "elephant palm sidewall" and the "elephant palm border", which I understand are the subjects of this litigation.
4. In early April of 2000, I received from Jaima Brown, Maxwell's Director of Design, requests for the following designs:
  - a) Elephant/Palm Trail (jb 17);
  - b) Palm Border (jb 18);
  - c) Scroll Trail (jb 19);
  - d) Elephant/Palm Border (jb 20);
  - e) Linen Texture (jb 21) ;
  - f) Faux Fur (jb 22);

- g) Faux Fur Stripe (jb 23); and
- h) Faux Fur Border (jb 24).

5. These requests were accompanied by sketch ideas and a number of references including a piece of fabric, several pages from magazines and other printed materials including a piece of the York "elephant" wallpaper.
6. As was customary in my business dealings with Maxwell and Jaima Brown, I discussed the proposed designs referred to in paragraph 4 with Jaima Brown. I then faxed proposed design layouts and sent to Jaima Brown techniques and colours, as specified by her. She rejected my proposals for the "Faux Fur (jb 22)", "Faux Fur Stripe (jb 23)" and "Faux Fur Border (jb 24)" designs. Between the time that Jaima Brown originally contacted me and the time that the final artwork was submitted to her (on May 16, 2000), I prepared sketches, techniques, and colours for the various proposed designs, and I discussed them several times with Jaima Brown. After these discussions I would make minor alterations or modifications to these sketches and drawings in accordance with her suggestions, including changes to the background motif, the scroll and the position of the elephant's trunks. After final approval of the details, I completed the designs and sent them to Maxwell. The final designs sold to Maxwell on May 16, 2000 were an "elephant palm sidewall" design, an "elephant palm border" design and a "leaf scroll" design, which I understand were used by Maxwell in the Maxwell Sequicentennial Collection.
7. Inspiration for the elephant designs came from a combination of elements including the fabric supplied to me by Jaima Brown, some pictures of elephants and my knowledge of the appearance of Indian elephants in the design process. My inspiration for the palm tree content came from photographs of pillows bearing a palm motif as well as other photographs of palms.
8. I did not copy the York elephant design, and neither was I asked to do so. The "elephant palm sidewall" design, the "elephant palm border" design, and the "leaf scroll" design were independently created by me with the advice and input of Jaima Brown. None of the elements of these designs were copied from the York elephant design or from any other wallpaper product.

9. I sold the designs in issue in this litigation to Maxwell on May 16, 2000. At this time, I intended to transfer the copyright in the designs to Maxwell in exchange for payment for the designs. This is common practice in my industry, and I do this on a regular basis. Attached hereto as Carroll Exhibit ~~1~~ *EXHIBIT 1 PG* is a copy of my log book bearing the following information:
- (a) The dates on which I completed the designs in issue in this litigation;
  - (b) The description of the designs; and
  - (c) The price that was charged for these designs.
10. Also attached hereto as Carroll Exhibit 2 is a cheque stub receipt from the S.A. Maxwell Company, dated May 16, 2000, which I have kept in my records as receipt of payment for these designs.
11. In June of 2001, when I spoke and sent an e-mail to Stan Thomas of York, I told him that I did not copy any York design, and I repeated this statement in August of 2001 to a Tom Heyer, an attorney whom I understood was working for York, when he visited me in Canada.

Dated: Orangeville, Ontario, Canada  
24 April, 2002



William Carroll



MAY 16.	MAXWELL (MOS) ELEPHANT / TRAN (JB17)	1000.00
MAY 16	MAXWELL (MOS) PAW BORDON. (JB18)	850.00
MAY 16	MAXWELL (MOS) SCREW TRAN. (JB19)	950.00
MAY 16	MAXWELL (MOS) SCREW + STRIPE (JB24)	30.00
MAY 16	MAXWELL (MOS) FAUX FUR BORDON (JB23)	50.00
MAY 16	MAXWELL (MOS) CORAL & SCREW / LAYOUT (JB22)	200.00
MAY 16	MAXWELL (MOS) ELEPHANT / SCREW BORDON (JB20)	950.00
MAY 16.	MAXWELL (MOS) LEMON TURTLE (JB21)	400.00
MAY 24	SPRIN (SP45) "GLUCK STEW" ALLOW. (WELLY 1)	900.00

4430.00



S. AXWEL. O.

200102 TIERKELLY DESIGNS LTD

DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.  
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DATE	INVOICE NO.	AMOUNT	DISC.	NET	DATE	INVOICE NO.	AMOUNT	DISC.	NET
05/16	705	4430.00	.00	4430.00	-	6417-30			
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									058867

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